A Double Plea for International Opening and More Strongly Interlinked Multidisciplinarity

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The German Council of Sciences and Humanities calls for an international opening and a legal science that is more strongly linked to its neighbouring disciplines. Both requests merit support – if they are considered as part of a development of the existing legal education, rather than a revolutionary request that overturns the current system in Germany.

I. The Survey's Main Theses

Both of the central theses put forward by the German Council of Science and Humanities (henceforth Wissenschaftsrat) in a survey on 'Perspectives of Jurisprudence in Germany' apply to research and teaching alike:

The Wissenschaftsrat starts from the finding that jurisprudence is marked by a tight interlinking of theory and practice ('Professionsfakultäten') (p. 5 and 7), and positively asserts that this interlinking generally is successful both in academic studies and research. Thus the Wissenschaftsrat puts forward a main request and names a principal reason for the current need of jurisprudence to react to 'considerable shifts in its subject matter'; the main request being the 'strenghtening of the core modules, the intensification of multidisciplinary and disciplinary exchange, and an opening of jurisprudence into both university and science.' (p. 7, moreover p. 40 f.) The Wissenschaftsrat cites 'processes of Europeanisation and internationalisation, as well as further [unnamed] structural changes of jurisprudence' as the primary reasons for those considerable shifts in the subject matter. (p. 5, more broadly p. 7) Institutionally, the Wissenschaftsrat urges for a more pronounced differentiation – above all a stronger presence of women, of foreign lecturers, and the diversification of the curricula.

If understood as an encouragement to further development, not as a rejection of the hitherto existing foundations, both principal directions are highly convincing. In all likelihood this is how the survey ought to be interpreted. It is moreover correct that in order to heighten the chances of implementation, changes need to be facilitated not only with regard to their contents, but also through institutional systemic means. The content related work on these changes, from within research and teaching, coexists with this; a fact which, it seems to me, is on the contrary not being sufficiently recognised for both principal directions of the survey. More precisely: the aforementioned diversification may be important to both main demands and both principal directions, however, relevant models do already exist in research and teaching. A central concern would therefore be their general broadening and support, and less so an entirely new conceptualisation.

II. On Research

The *Paragraph on Research* (and publishing) is aimed even more strongly at institutional measures alone.

The significance of basic facilities, deemed indispensable for research in small units, is underlined in the beginning, and must be agreed to generally. (p. 38 ff.) Individual research continues to be of outstanding importance in the field of jurisprudence, probably more so than is the case in most other disciplines. (Incidentally this holds true for the USA, too.) Likewise, said basic facilities often form the foundation for networking. This statement, of course, is made on the assumption of appropriately equipped professorships. The substantial downsizing of basic facilities over the course of the last decades ought to have been criticized much more decidedly. Besides the bloated apparatus of evaluation and administration, it is this downsizing which forms the biggest 'fall of mankind', in any case in the field of comparative law. To sustain the bases for individual research – both facilities and time – and to make them available to a large number of legal scholars, is, in my opinion, as important as the two principal arguments of the survey.

The Wissenschaftsrat's demand that researchers retain their particular language is correct as well, even if only, as I would add, in order to preserve the interconnection between research and the practice of law, as the latter has to take place in German as a matter of course. A Europe-wide or even global appreciation, however, requires a heightened output of publications in English (and other languages) (p. 9 et passim). If we deem both types of connection important, the demand for multilingualism remains without any alternative from the point of view of comparative law in Germany. The following three aspects appear to me to be crucial here: first, appropriate basic facilities are important and useful in this regard, too. Second, guidelines in the sense of the 'evaluation procedure for quality of research' as proposed by the Wissenschaftsrat ought to be considered here (p. 8, p. 38 ff.), since multilingualism in the oeuvre still carries hardly any weight when it comes to evaluations, and especially with regard to appointments. That an article in the Modern Law Review might be considered less worthwhile than one in the German 'Juristenzeitung' – no disrespect to the 'Juristenzeitung' intended – is rather scandalous. With regard to international networks of scholars, the Wissenschaftsrat's admonitory words (p. 9, p. 42 ff.) need to be put into perspective: at least in Europe there already is talk of a supremacy of German legalscholars in international networks, and it is also unmistakable in my view that new generations are further developing these networks.. Among all large EU member states, the German (and potentially the Italian) legal scholarships seem to me to be those with the strongest international links, tendency growing. When compared with the USA, it simply is a different perspective: whilst US American legal scholars indeed appear to be all-pervasive, it is in fact the 'export' of US American ideas which are most influential. A more balanced picture of reciprocity conversely characterises the large member states, and among them Germany. It is true that Europeanisation and internationalisation are indeed on the rise. It is also true that legal scholars who endeavour to gain international standing find all the necessary preconditions at their

fingertips in Germany today – even if the positive impact such profiling has on one's career may be rather minimal.

III. On the General Framework for Internationalisation and Teaching

Both of the above mentioned main directions or demands apply to teaching as well as to research, and will be more closely examined here.

The Wissenschaftsrat states that on average a disproportionately smaller number of foreign lecturers teaches at law departments, compared with other departments (p. 42-44). This certainly also relates to the fact that law may to a growing extent be European and international, but there is almost no field of law which isn't also national. Few courses can be taught without a well-founded training in German law. Alternatives should, at any rate, be taken into account: one alternative is to rely on a stronger presence of foreign lecturers in Germany in times of scarce resources, the other is the encouragement of language skills and mobility among students. Thus, foreign-language law courses (taught by foreign lecturers) on virtually all large jurisdictions are offered and have been declared more or less compulsory at Humboldt University. What is more, students are highly encouraged to go abroad, for example within the scope of the ERASMUS Programme, but chiefly through the accreditation of semesters spent at universities abroad within the (German) university part of the Exam (with four partner universities in Geneva, London, Paris, and Rome today). Nearly 20% of students seize one of these opportunities – regardless of the pursuit of an LL.M. degree course abroad. And the percentage of those who belong to the so-called decision taking élite and who truly form the law is hardly any higher. The financial budget for the whole package (consisting of lecturers, mentoring, etc., without scholarships) is smaller even than that of a single professorship. In addition, the stay abroad may well be the original experience of diversity, with a foreign lecturer being a mere surrogate. Great Britain is in fact the most 'international' of (large) member states as far as origin of lecturers is concerned, but brings up the rear in terms of students' mobility. It is at any rate essential to think of alternatives. Thus, the Wissenschaftsrat rightfully points out the existence of excellent funding opportunities, which have afforded Germany a great deal of admiration and jealousy internationally. They ought to be upheld.

IV. On the Content

I fully and unconditionally agree with the Wissenschaftsrat's emphasis on the survey's two main demands or directions: the question as to what aspects of the – otherwise sound and healthy – structure of legal research and teaching in Germany are in most need of development and reinforcement.

Firstly, there is the *Europeanisation and internationalisation*, which profiles questions about other normative types and qualities, and about societal surroundings as well ('other forms of the creation of norms and law', p. 7). Little needs to be said on the subject of organisation, above and beyond the already mentioned aspects of language skills and incentives to mobility: double degrees including the 'Staatsexamen' exist at several universities, including the University of Cologne and the Humboldt University in Berlin, and extending to both civil and common law

jurisdictions. As a result of this, students already have the opportunities described above at their disposal, at no higher expenditure of their time, granted they are willing to put in a little extra dedication. The European Law School (Berlin/London/Paris/Rome) follows an even more ambitious path (for further information visit http://www.european-law-school.eu). It combines the two dimensions of 'Staatsexamen' and a more thorough LL.M. year complete with its multidisciplinary component in both of the foreign jurisdictions. The same is offered for French, British, and now Italian students respectively. The duration of each course, too, amounts to only five or, if desired, six years. So far, all students passed the classical Staatsexamen with markedly above-average results.

Summer schools place the foundation of theory and multidisciplinarity of a larger 'theme of law and justice' at the centre of their interest. Tightly woven networks and friendships develop, a circle of sponsors invites students to gain practical experience and to do placements at regular intervals.

Europeanisation, theoretical grounding and interdisciplinary go hand in hand – not only within the curriculum of the European Law School, but on a more general level. A legal system that is still in the making, one that transcends (even judicial) boundaries, can never be grasped, nor can it be taught doctrinally, for instance by pointing toward the jurisdiction of a supreme court, as is routinely done in national legal systems. The task can only be achieved through a discourse which is based upon theory and multidisciplinarity alike. Only such a discourse can lead to acceptance across borders, and the international subject matter requires a multidisciplinary style!

What can we learn from this? Berlin and Humboldt University have substantially contributed to facilitating the establishment of the European Law School. Nevertheless, a lot of time and effort have been necessary in the formation of this institution as we know it. Elsewhere, a more generous public contribution would help replicate this process. It would be important to have maximum support and as little red tape as possible. In concrete terms: it would immensely facilitate the process of internationalisation if each law department was granted – without further scrutiny – a budget for the establishment of *one* well-structured degree course abroad. Based on my experience, a total of 1 million € for 10 years per degree course – 60 million € over the course of 10 years, 6 million € per year. Law faculties certainly are capable of selecting the *one* 'right' project. In return, the person taking on the responsibility for this project during the first three years could, for instance, be granted the status of dean, or be rewarded with an extra semester's funding.

This at last leads me to possibly the most important aspect of the survey: The Wissenschaftsrat rightfully does not so much deplore weakness and lack of modules and lectures that cover basic theoretical aspects of the law. Such modules and lectures exist, but they are generally not very well frequented and may carry too little weight within the curriculum. Instead, the Wissenschaftsrat primarily laments the '*dysfunctional juxtaposition of doctrinal and basic modules* on the one hand, and of theoretical and practical research on the other'. The Wissenschaftsrat thus advocates for (more) 'mutual exchange, which would bring about synergy effects' (p. 7, p. 40f.), but it especially advocates for a cluster in teaching, which would indeed

be a novelty, and quite original (p. 58ff.): 'Basic and doctrinal modules ought in the future to be taught as part and parcel of a degree, rather than as an addition to it. This ought to be the case for the entirety of the degree.' I wholeheartedly agree with this standpoint. It may well be appropriate to teach law as a means of social regulation and formation right from the start, instead of commencing with 'non-theoretical' basic knowledge. From experience I can say that the subject matter of law is a fascinating one from the very beginning if understood as a long-term model for societal formation, and thus as an integral part of the social sciences.

Of course, the "specialization" part (*Schwerpunkt*) of the degree concedes greater scope to this, thus allowing for work that is not only exemplary, but systemic and profound. The Wissenschaftsrat, however, does not stop here, but emphasizes that there are three intersections between empirical and theoretical knowledge, and that all of those intersections ought to be used as opportunities to teach the law as a whole: intersections exist between theoretical foundations and the application of law, between multidisciplinary foundations, explanatory models of the law (often hardly to be separated from legal theory) and its application, and the interconnection in comparative solutions and comparative law.

While the Wissenschaftsrat does not make this explicit, a specific image of comparative law stands behind this, one that could at any rate be developed especially well through the programme at hand: theoretical foundation and multidisciplinarity can, on the one hand, lead to the consultation and the inclusion of *one* neighbouring discipline or theoretical orientation, partly even in a leading position. The economic analysis of law, which partly owes its success to the clarity in the 'application' to law, forms an example of this. A reference to it immediately suggests itself in areas with an economical relevance. On the other hand, theoretical foundation and multidisciplinarity can also be developed in a way that places law at the centre and puts *all* relevant disciplines into relation to it (for instance deliberations on law that are sociological, system-theoretical, behavioural scientific, potentially philosophical, etc.). Law is the subject of a great many disciplines, and all of them should, in my opinion, be taken into account by legal science. This broad, comprehensive multidisciplinarity comes with strict limitations, at least for the individual. It is therefore extremely helpful, especially with view to this limitation, to set out from a concrete problem or area of law. The knowledge about questions and interests of regulation – an especially rich knowledge in jurisprudence – can be purposefully combined with those theoretical approaches and neighbouring disciplines that are most relevant to the area in question. Speaking from experience I might add that new insights constantly evolve, due to this perspective which crosses boundaries even within multidisciplinarity. There will be a lot of trial and error with a multidisciplinarity as omnipresent as this. The evolution of a market of similar juxtapositions and discourses, however, could be highly beneficial to jurisprudence. As has been stated before, the primary focus would need to be on a narrow field. The image of jurisprudence could in consequence be summarised as follows: law is placed at the centre, but all contributions to it are of interest.

The Wissenschaftsrat further analyses the necessary steps to be taken in order to allow for this kind of education, and makes the case for a reduction of the overall

syllabus. In Berlin – where I teach – the curriculum relevant to the Staatsexamen is narrower than in Bavaria – where I studied. Maybe cases are being examined within this more narrowly defined spectrum which especially challenge the students' ability to adapt to new questions. I certainly deem the chances of realisation to be higher than does the Wissenschaftsrat. The one year of specialization (*Schwerpunkt*) seems to me to be an appropriate period in which to pick out core institutions of private or public law, and to thoroughly examine them along all three of the dimensions listed by the Wissenschaftsrat. A reduction of the syllabus throughout the rest of the degree seems unnecessary. The (one year) curriculum of those students who come to Berlin during their specialisation phase as part of the European Law School is already thus characterised: when studying contract law they are also taught – because they are foreigners – German contract law, but moreover they study (i) the economic theory behind contracts and contract law, (ii) comparative contract law, and (iii) European contract law and its overlap with market regulation law. It should easily be possible to plan a specialization year which examines two or three large institutions thoroughly and from various perspectives. It would not even be necessary for all students to take that particular course during their specialization, or for all core units to be adjusted accordingly. Two distinct sets of specializations could remain in place: those that endeavour to impart further detailed knowledge of specific legal fields, next to the new ones which seek to transmit a certain sensitization for certain core areas and institutions of the law. I should expect 10-20% of all students to opt for the latter, and among them probably the best and brightest. The percentage, again, of those students who will belong to the decision-taking élites and who will ultimately 'make' the law, will certainly not be any higher. As rightfully emphasized by the Wissenschaftsrat, interconnection is crucial, such as the reference of a theoretically oriented education to concrete legal institutions, for instance contract law. What such an approach should look at then is not the abstract term of justice, but justice specifically within a contractual relationship, and even more precisely, within various types and situations of contracts.

Since an integration into the basic modules and – more intensively – into the specialization year does appear to be feasible, new bridges need not be constructed (not even via the cancellation of courses hitherto taught). Conversely, however, a gap opens up here which needs to be bridged, even if the Wissenschaftsrat does not address it. There is practically no literature which would combine theory and legal doctrine, such as, for instance, multidisciplinary theory. *Kötz* and *Wagner's* Tort Law constitutes one of the exceptions. Books on the law of obligations, on property law, and on inheritance law are doctrinal and mostly free of the three above mentioned dimensions. *Rodolfo Sacco* has published such a multidimensional textbook on tort law in Italy, as has *Hugh Collins* on contract law in Great Britain. But even outside of Germany they constitute rare exceptions. The author of these lines has even been attacked for having woven comparative paragraphs into a 'doctrinal' description of European (!) company law, for posing the question of benchmarks, and, moreover, for supporting the material with the relevant economic debate and theory (*Kindler* NZG 2011, 1180; reply NZG 2012, 419). Should the Wissenschaftsrat's second main demand prove successful, this would alter the image of comparative law fundamentally: what it demands – even if not expressly so – are textbooks that do not only present the doctrine, but that blend it with a theoretical, multidisciplinary

and comparative perspective of the aforementioned kind. Ultimately, legal training would metamorphose (back) into an education on law *and its role in society*. Within the year, the author will publish a collection and commentary of great 'theories of private law', conceived according to those principles, and grown in seminars over the course of many years. It will mainly refer to contract, market, risk, and tort, as well as corporation, but also to standardisation and questions of justice in private law more generally.

V. Conclusion

To summarise, four aspects warrant highlighting: reliable *basic equipment* and its availability to a sufficiently large number of legal scholars are indispensable to the discipline of comparative law. The need to lobby for this goal has been recognised by the Wissenschaftsrat, but deserves greater attention. In international comparison Germany does do well here – a 'dominance' which ought to be preserved if international excellence is a declared goal. When it comes to the study of law/jurisprudence, I personally would defend the 'Staatsexamen' more decidedly than the Wissenschaftsrat has. In my opinion, the reasonable developments – in internationalisation, but also in theoretical and multidisciplinary foundation of jurisprudential research and teaching – can well be integrated into this frame, a frame which simultaneously guarantees a high quality education and reliable benchmarks. With regard to *internationalisation*, students of the European Law School and many bilateral programmes that culminate in the 'Staatsexamen' have delivered striking proof: they attain top results while at once completing a highly internationalised education. Not every student of law has to necessarily cover this intense workload, but certainly a large part of those who will in the future play a formative role in 'developing' jurisdiction in society. A utilisation of the university focus could easily be put into place for the *theoretical and multidisciplinary foundation* of law and the teaching of it. *Overall, the survey can be called a success since it unerringly accentuates those two aspects which the – in my opinion otherwise outstanding – judicial education in Germany has thus far been lacking: international opening and a more strongly interlinked multidisciplinarity are two appeals of utmost importance, well worthy of being honoured in the long term.*

This contribution is an abridged and translated version of Stefan Grundmann, "Ein doppeltes Plädoyer für internationale Öffnung und stärker vernetzte Interdisziplinarität", Juristenzeitung 2013, p. 693-697
